

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ANDREA JOHNSON,
Plaintiff,

v.

JAIPERSAD GILDHARRY and
SE INDEPENDENT DELIVERY, LLC,
Defendants.

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Civil Action No.: 5:21-cv-307

**DEFENDANT SE INDEPENDENT DELIVERY
SERVICES, INC.'S NOTICE OF REMOVAL**

COMES NOW Defendant SE Delivery Services, Inc., incorrectly named as “SE Independent Delivery, LLC” (“Defendant” and/or “SEIDS”), and pursuant to 28 U.S.C. § 1332, 1441(a) and 1446(a), removes this from the 57th Judicial District Court of Bexar County, Texas, to the United States District Court for the Western District of Texas, San Antonio Division. In support of this removal, Defendant respectfully offers the Court the following:

I.

BRIEF FACTUAL AND PROCEDURAL BACKGROUND

1. In this personal injury lawsuit, Plaintiff Andrea Johnson (“Plaintiff”) alleges that on March 20, 2019, she was in a motor vehicle accident with Defendant Jaipersad Gildharry (“Gildharry”) at or near the intersection of Gibbs Sprawl and FM 78 in Kirby, Texas. ***See Exhibit “H” (Plf’s First. Amend. Pet.) at ¶ 7.*** Plaintiff further alleges Gildharry was operating a white 2000 Volvo tractor, which was owned by Defendant. ***See id.*** Finally, Plaintiff alleged she sustained various injuries as a result of the collision. ***See id.***

2. On July 10, 2020, Plaintiff filed her Original Petition in the 57th Judicial District Court of Bexar County, Texas. ***See id.*** Plaintiff asserts claims for negligence and negligence *per se*

against Gildharry, and claims for negligence, respondeat superior, and negligent entrustment against Defendant. *See id.* at §§ V–VI.

3. Defendant was served on August 13, 2020. *See Exhibit “D” (Citation to Defendant)*. Defendant timely filed its Original Answer on September 8, 2020. *See Exhibit “F” (Defendant’s Original Answer)*. After not being able to locate Gildharry, Plaintiff filed a Motion for Substituted Service on December 13, 2020. *See Exhibit “G” (Plf’s Motion for Sub. Serv.)*.

4. In Plaintiff’s Original and First Amended Petitions, she alleges that Gildharry is “an individual residing in Bexar County, Texas, and may be served with process at his residence at 6922 N. Interstate 35, San Antonio, Texas 78219-4461.” *See Exhibits “C” (Plf’s Orig. Pet.) and “H” (Plf’s First Amend. Pet.) at ¶ 3*. However, subsequent investigation has confirmed that Gildharry is not a resident of Texas, but is instead a resident of Florida. *See Exhibits “H” (Decl. of J. Gildharry)*. Importantly, at the time Plaintiff’s suit was filed on July 10, 2020, Gildharry was a “citizen” of Florida. *See id.*; *see also Ashford v. Aeroframe Services, LLC*, 907 F.3d 385, 386 (5th Cir. 2018) (“As the Supreme Court has emphasized, federal diversity-of-citizenship ‘depends upon the state of things at the time of the action brought.’”) (citing *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 570–71 (2004)).

5. Accordingly, Defendant now files this Notice of Removal within thirty (30) days of learning there is complete diversity between Plaintiff, on the one hand, and Defendant and Gildharry, on the other. 28 U.S.C. § 1446(b)(3). Additionally, this case is being removed within one year of the commencement of the action as required by 28 U.S.C. § 1445(c)(1).

II.
GROUND FOR REMOVAL

6. Removal is proper because subject-matter jurisdiction is established under 28 U.S.C. 1332(a).

i. Amount in Controversy Exceeds \$75,000.00

7. The amount in controversy in this lawsuit exceeds the sum or value of \$75,000.00, as Plaintiff expressly alleged she is seeking monetary damages of “more than one million and 00/100 dollars (\$1,000,000.00).” *See Exhibit “C” (Plf’s Orig. Pet.) at ¶ 22.* It is facially apparent from Plaintiff’s Original Petition that the amount in controversy exceeds the sum or value of \$75,000.00. *See Menendez v. Wal-Mart Stores, Inc.*, 364 F.App’x 62, 66 (5th Cir. 2010) (applying the “facially apparent” test).

ii. Complete Diversity of Citizenship

8. There is also complete diversity of citizenship between Plaintiff and each Defendant at the time the underlying action was filed and at the time of removal because:

- a. Plaintiff is a citizen of Texas. *See Exhibit “C” (Plf’s Orig. Pet.) at ¶ 2.*
- b. Defendant is a corporation organized under the laws of Florida with its principal place of business in Lakeland, Florida. Defendant is not a citizen of Texas.
- c. Gildharry is a citizen of Florida. Gildharry is not a citizen of Texas. *See Exhibit “H” (Decl. of J. Gildharry).*

III.
VENUE IS PROPER

9. Venue is proper in this Court under 28 U.S.C. § 1441(a), because this district and vision embrace the place in which the removed state court action is pending. Specifically, the 57th

Judicial District Court of Bexar County, Texas is within the district and division of the United States District court for the Western District of Texas, San Antonio Division. *See* 28 U.S.C. § 124(d)(4).

IV.

DEFENDANTS HAVE COMPLIED WITH ALL PROCEDURAL REQUIREMENTS

10. As required by 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon Defendant are attached to this Notice of Removal, and include the following:

- a. Exhibit “A”** – Index of Matter Being Filed
- b. Exhibit “B”** – Docket Sheet from State Court
- c. Exhibit “C”** – Plaintiff’s Original Petition
- d. Exhibit “D”** – Citation to Defendant
- e. Exhibit “E”** – Citation to Gildharry
- f. Exhibit “F”** – Defendant’s Original Answer¹
- g. Exhibit “G”** – Plaintiff’s Motion for Substituted Service for Gildharry
- h. Exhibit “H”** – Plaintiff’s First Amended Petition
- i. Exhibit “I”** – Gildharry’s Original Answer
- j. Exhibit “J”** – Declaration of Gildharry
- k. Exhibit “K”** – List of Counsel of Record.

11. Upon filing this Notice of Removal, Defendant will promptly provide written notice to Plaintiff and file a copy of this Notice with the clerk of the state court where the suit has been pending, in accordance with 28 U.S.C. § 1446(d).

¹ On September 9, 2020, Defendant filed its Original Answer in the state court proceeding. *See* Exhibit “F”; Fed. R. Civ. P. 81(c)(2) (“After removal, repleading is unnecessary unless the court orders it.”).

12. In the event this Court subsequently identifies a defect in this Notice of Removal, Defendant requests this Court to grant Defendant leave to amend this Notice and cure such defect. *See Sutton v. Advanced Aquaculture Sys., Inc.*, No. 07-CV-175-XR, 2007 WL 1032339, at *1 (W.D. Tex. April 3, 2007) (explaining “Defendants may still amend their notice of removal after the expiration of the original 30-day time limit for removal.”); *Lafayette City-Parish Consol. Government v. Chain Elec. Co.*, No. 11-1247, 2011 WL 4499589, *7 (W.D. La. Sept. 23, 2011) (explaining “defendant may freely amend the notice of removal required by section 1446(b).”).

13. By filing this Notice of Removal, Defendant does not waive any legal defenses, but expressly reserve their right to raise any and all legal defenses in subsequent pleadings in this Court.

14. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure, as required under 28 U.S.C. § 1446(a).

V.
CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Defendant represents that Defendant has complied with the removal statutes set forth herein, and thus, this case stands removed from the 57th Judicial District Court of Bexar County to the United States District Court for the Western District of Texas, San Antonio Division.

Respectfully submitted and signed pursuant to
Federal Rule of Civil Procedure 11,

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**ATTORNEYS FOR DEFENDANT
SE INDEPENDENT DELIVERY SERVICES, INC.**

CERTIFICATE OF SERVICE

I, the undersigned counsel, hereby certify that a true and correct copy of the foregoing was forwarded, as indicated below, to all known counsel of record in compliance via CM/ECF with the Federal Rules of Civil Procedure on this the 26th day of March 2021.

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